



Income Assistance

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<http://www.dal.ca/faculty/law/dlas/public-legal-education.html>

Acknowledgement

Dalhousie Legal Aid Service would like to gratefully acknowledge and thank the [Law Foundation of Ontario](#) for its financial support of LEAP.

Disclaimer

This document contains general legal information and not legal advice. **If you need advice about a specific legal problem then you should contact a lawyer.** If you will have difficulty affording a lawyer then you should contact [Nova Scotia Legal Aid](#) or [the Legal Information Society of Nova Scotia's lawyer referral service](#).

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Initial Eligibility

Legislative Framework

Income Assistance is governed by the *Employment Support and Income Assistance Act (ESIA)*:
<http://nslegislature.ca/legc/statutes/employsp.htm>

There are also two sets of Regulations:

- i. The first set of regulations are key. They provide all of the details on how Income Assistance operates on a day to day basis: <http://www.gov.ns.ca/just/regulations/regs/esiaregs.htm>
- ii. The second set of regulations govern the appeal process:
<http://www.gov.ns.ca/just/regulations/regs/esiaappl.htm>

Policy Manual

The Department of Community Services also has a Policy Manual for Income Assistance:
http://novascotia.ca/coms/employment/documents/ESIA_Manual/ESIA_Policy_Manual.pdf

The Policy Manual is **not** the law! The *ESIA* and *ESIA Regulations* are the law, and the Policy Manual is only valid insofar as its contents reflect the law.

Nonetheless the Policy Manual is extremely important as it is what Income Assistance caseworkers use in making their decisions.

Eligibility Criteria

Budget Deficit

The most basic eligibility criteria for IA is the budget deficit system. The budget deficit system works as a ledger:

Allowable Expenses:	Chargeable Income:
Personal Allowance	Employment Income (including spouse's income)
Shelter Allowance	Child Support
Special Needs	Canada Pension Plan
	Etc... (a full list of chargeable income is found in <i>Regulation 47</i>)
Total Allowable Expenses	Total Chargeable Income

An IA applicant's allowable expenses must exceed their chargeable income to be eligible for IA – see *Regulation 11*.

Residence

Regulation 14; Policy Manual 5.1.1 & 5.11.1 – 5.11.7

An applicant must be present in Nova Scotia at the time of their IA application.

There is no minimum residency period before someone can apply for IA.

Other Sources of Income

Regulation 12; Policy Manual 5.1.4

Income assistance is a program of last resort.

Someone is ineligible for IA if there is another feasible source of income or applicable assets available to provide for their basic and special needs.

A feasible source of income could include: CPP, OAS, GIS, child or spousal support, EI, etc...

IA applicants and recipients are under an obligation to commence legal proceedings or enforce court orders that would provide them with financial support.

Assets

Regulations 2(f), 54, 55 & 60A; Policy Manual 5.7.10 – 5.7.15

At the time of application a single person will be ineligible for IA if they have more than \$1,000.00 in assets.

At the time of application a family will be ineligible for IA if they have more than \$2,000.00 in assets.

If IA is denied on the basis of excess assets an applicant must wait at least 1 month and not more than 1 year before reapplying for IA.

Examples of assets that are not considered when assessing eligibility include:

- i. An applicant's primary residence;
- ii. A motor vehicle used for basic transportation;
- iii. A Registered Education Savings Plan (RESP);
- iv. An Registered Disability Savings Plan (RDSP); and
- v. Tools or equipment related to a trade or profession.

Reasonable Dissipation of Assets

Regulation 55; Policy Manual 5.7.16

An applicant can also be denied IA if they unreasonably dissipated assets within 1 year of their application for IA, as determined by a supervisor.

Reasonable dissipation of assets by either an IA applicant, or recipient, includes:

- i. Personal and family shelter – including the purchase of a home;
- ii. Basic needs;
- iii. Necessary home repairs; **or**
- iv. Replacement of necessary items.
- v. Proof that assets were spent on those items must be provided (i.e. receipts).

Age

Regulations 14 & 66; Policy Manual 5.1.1 & 5.10.1

The general rule is that a person must be 19 to apply for IA in their own right.

A person aged 16-18 can apply for IA if in the opinion of a caseworker:

- i. They are exposed to an unsafe home environment;

- ii. An unresolvable parental conflict; or
- iii. Unable to remain at or return to home due to a parental decision.

A youth must also be willing to:

- i. Participate in an employment plan;
- ii. Attend school;
- iii. Live somewhere with a level of supervision, accountability and guidance appropriate for their age; **and**
- iv. Access medical and counseling services as required.

A caseworker may grant IA to a youth living alone if the caseworker is satisfied they have the necessary life skills and maturity to live alone.

Spouses

Regulations 2(ac) & 2(ja)

According to the *ESIA Regulations* a spouse includes a husband or wife of an applicant or recipient **or** a common-law or same-sex partner of an applicant or recipient.

Common law partners must live with one another in a relationship of interdependence – both economically and domestically. In addition **1** of the following must apply to the 2 people in the relationship:

- i. They have lived together for 12 consecutive months;
- ii. They have a child or children – either by birth, adoption or legal custody;
- iii. They previously lived together for 12 consecutive months, including any separation of less than 90 days; **or**
- iv. They advise a caseworker they are a common-law couple.

Rules Relating to Spouses

Regulations 47(1)(a) & 10; Policy Manual 5.7.1 & 5.17.3

A spouse's income is included with an applicant's income when applying for IA.

An applicant is ineligible for IA if they have separated from their spouse for the purpose of qualifying for IA.

Employment

Regulations 21(1) & 21(2); Policy Manual 5.17.6 – 5.17.7

Applicants will be subject to a 6 week waiting period if they or their spouse within 4 months prior to their application for IA:

- i. Quit a job without just cause;
- ii. Were fired with just cause; or
- iii. Quit a job for the purpose of qualifying for assistance.

While 'just cause' is not defined in the *ESIA* or *ESIA Regulations*, the Policy Manual (5.17.6) indicates that income assistance can be granted where there are justifiable circumstances for quitting or having been fired from employment. The only example provided in the Policy Manual is where the health or safety of the individual was in jeopardy.

People engaged in a strike or who are locked out by their employer are not eligible for IA.

Education

Regulation 67; Policy Manual 7.3.1 – 7.3.4

IA will **not** be given to, with very limited exceptions, a person attending a post-secondary education program of more than 2 years in length.

In order to participate in an post-secondary education program of two years or less in length an IA recipient **must**:

- i. Have been the subject of an employability assessment that recommends participation in a post-secondary education program of 2 years or less;
 - ii. Have pursued other sources of income, but they are unavailable or insufficient;
 - iii. Have been in receipt of IA for the 6 months immediately preceding the start of the program;
- and**
- iv. Be available for work when not in school.

Only IA recipients who are funded by the Employability Assistance for Persons with Disabilities Program or participants in the Career Seek Pilot Project are eligible to attend a post-secondary education program of more than 2 years in length.

Additional funds for books and tuition are **not** provided by IA.

Applying for Income Assistance

Regulations 5 & 9; Policy Manual 5.1.3 & 5.1.8

In order to apply an Applicant must go to their local Department of Community Services office, and complete an application.

A list of Community Services offices can be found here:

<http://novascotia.ca/coms/departement/contact/index.html>

At the time of application applicants will be asked to provide information to verify their eligibility for IA, and will be asked to sign a release to allow the Department to obtain necessary information from 3rd parties.

If an IA Applicant, or Recipient, would suffer undue hardship (in the opinion of a caseworker) by having to provide required documentation in a timely manner assistance **may** be granted pending the provision of the required documentation.

Allowable Expenses

Personal Allowance

Regulations 31 & Appendix A; Policy Manual 5.3.1 – 5.3.8 & 5.5.1

Once on IA all recipients are eligible for a personal allowance.

The personal allowance amount is contained in a table at the end of the *ESIA Regulations*.

The personal allowance for adults is currently **\$255.00** per month.

While legally entitled to it, dependent children (under the age of 18) do not receive a personal allowance unless they are **not** in receipt of the child tax benefit.

Shelter Allowance

Regulations 31, 35(1) & Appendix A; Policy Manual 5.4.1 – 5.4.8 & 5.5.1

Once on IA all recipients also receive a shelter allowance.

There are shelter allowance rates for those who rent or own, and shelter allowances for boarders. The policy manual sets out the criteria for when someone is considered to be a boarder versus a renter.

Both shelter allowances cover 100% of **actual** shelter costs up to a maximum based on family size. Shelter allowances are contained in a table at the end of the *ESIA Regulations*.

What is Included

Regulations 36 – 42; Policy Manual 5.4.6

The shelter allowance includes 100% of the following up to the maximum allowable shelter allowance:

- i. Rent or mortgage payment;
- ii. Property taxes;
- iii. Heating costs;
- iv. Electricity costs; and
- v. Water costs.

Amounts

Regulation Appendix A & 35(2); Policy Manual 5.5.1 & 5.4.8

Current monthly shelter allowances for people who rent or own are as follows:

- i. \$300 for a single person;*
- ii. \$570 for a family of two; and*
- iii. \$620 for a family of three or more;*

Current monthly shelter allowances for boarders are as follows:

- i. \$223 for a single person;*
- ii. \$242 for a family of two; and*
- iii. \$282 for a family of three or more.*

In roommate situations each roommate will receive 50% of their actual shelter costs based on their family size.

Incremental Shelter Allowance

Regulations 45 & 32; Policy Manual 5.4.1(a) & 5.4.2

If certain criteria are met single IA recipients can receive an incremental shelter allowance of **\$535.00** per month. This amount is instead of, not in addition to, the regular shelter amount.

The criteria for receiving an incremental shelter allowance are:

- i. Disability;*
- ii. Fleeing abuse;*
- iii. 55 years of age and over; **or***
- iv. A youth (16-18).*

A supervisor **may** exceed the incremental shelter allowance if a recipient requires barrier free housing.

Special Needs

What are Special Needs?

Regulation 24(1) & Appendix A; Policy Manual 6.2.1 – 6.2.34 & 6.3.1 – 6.3.4

Special needs are amounts provided for items which fall outside of the personal and shelter allowances.

Examples of special needs include, but are not limited to:

- i. Dental care;
- ii. Optical care;
- iii. Pharmacare coverage;
- iv. Special diet;
- v. Transportation; and
- vi. Phone for health or safety reasons.

A full list of special needs is found in the Policy Manual.

Special Needs Requiring a Doctor's Note

Regulation 62; Policy Manual 9.1.1 – 9.1.6

The most common special needs are:

- i. Pharmacare – all IA recipients are covered.
- ii. Transportation for medical reasons (usually a bus pass);
- iii. Telephone for medical reasons; and
- iv. Special diet – the special diet schedule is contained in the Policy Manual.

An IA recipient should be able to obtain the above noted special needs (except Pharmacare) with a doctor's note indicating that the special need is required for medical reasons.

Pharmacare covers prescriptions for IA recipients, and their families, provided the prescription is for a drug listed on the *Nova Scotia Formulary*. There is a \$5.00 co-pay which can be waived if a recipient has more than 3 prescriptions, is a person with a disability or has a small dosage prescription to be taken on a frequent basis.

If a condition necessitating a special need is chronic occasionally only one doctor's note is required. However caseworkers may, and often do, ask for a new note on an annual basis.

Special Needs Requiring More than a Doctor's Note

Regulation 24(B); Policy Manual 6.1.2

For other special needs requests contained in the Policy Manual it may be necessary to provide the following information:

- i. An explanation as to the why the special need is required;
- ii. A description of the special need;
- iii. Any documentation from professionals supporting the special need;
- iv. The monthly or total cost of the special need;
- v. The resources or alternatives that have been investigated with respect to obtaining the special need from other sources;
- vi. If the item or service costs over \$200.00, two estimates from separate providers; **and**
- vii. An invoice or receipt if the special need has already been acquired.

Special Needs Not Listed in the Policy Manual

Regulations 24(2) & 24(A)(1) – (2); Policy Manual 6.1.1 & 6.2.18

Recent changes to the *ESIA Regulations* (effective October 1st, 2013) allow the approval of special needs not contained in the Policy Manual provided certain criteria are met.

If a client is seeking a special need not contained in the Policy Manual the first step to determine whether it is a permissible special need. A special needs request will **not** be granted, regardless of the circumstances of the applicant, if:

- i. The request is for an item or service that is insured by a Provincial health care plan (i.e. MSI), or otherwise funded by government;
- ii. The request is for a prescription drug not listed on the Nova Scotia Formulary;
- iii. The request is for shelter costs or personal allowances; **or**
- iv. The request is for medical marijuana or any equipment or supplies used in producing or administering medical marijuana.

The item or service in question **must** meet the following criteria in order to be considered a special need:

- i. It must be prescribed in the scope of their practice by either a physician, dentist or nurse practitioner;
- ii. It must be essential to the health of an applicant, recipient, their spouse or their dependent child/children; **and**
- iii. It must be provided by a medical professional licensed or registered to practice in Nova Scotia [A full list of of medical professionals licensed or registered to practice in NS can be found at the bottom of this link http://nslegislature.ca/legc/bills/61st_4th/1st_read/b147.htm - however it is important to note that the Policy Manual lists examples of treatments (such as massage therapy and acupuncture) which are not provided by professionals on the above list].

What the Caseworker Will Consider

In making the determination as to whether an item or service will be approved as a special need a caseworker will consider the following (some of these criteria are covered on the 'Request for Essential Medical Treatment' form that must be completed):

- i. The needs and circumstances of the applicant, recipient, spouse or dependent child;
- ii. The medical evidence of the appropriateness, necessity and effectiveness of the requested item or service;
- iii. The cost of the item or service in comparison to possible alternatives;
- iv. Availability of alternatives insured by the Province or otherwise funded by government; **and**
- v. Whether approving the item or service will fulfill the purposes of the *ESIA*.

In making their decision a caseworker may request advice from a person qualified to provide medical advice on the appropriateness, necessity or effectiveness of the item or service requested. If a caseworker requests advice they **must** advise their supervisor.

Should a caseworker determine that an item or service **should not** be approved as a special need they **must** notify the applicant and provide them with written reasons, and their decision is appealable.

Chargeable Income

What is Chargeable Income?

Regulation 47; Policy Manual 5.7.1 – 5.7.2 & 5.7.9

Chargeable income includes the income of an IA recipient, their spouse and amounts received on behalf of a dependent child.

Chargeable income falls into two categories: unearned and earned.

Unearned Income

Unearned income includes CPP payments, child or spousal maintenance payments, workers compensation, etc...

Unearned income is charged against a recipient's budget at **100%** - in other words every dollar of unearned income received results in one dollar less of income assistance.

Earned Income

Regulation 48(1); Policy Manual 5.8.1 – 5.8.2

The most common form of earned income is wages from employment. There is an 'earning incentive' applied to income from wages.

An IA recipient's first **\$150.00** of net wages is exempted from the budget deficit calculation, **and** the remaining net wages are charged at **70%** against an IA recipient's monthly entitlement.

For IA recipients engaged in supported employment the first **\$300.00** of net wages is exempt – the remainder is treated the same as recipient's not engaged in supported employment.

Non-Chargeable Income

Regulations 52 & 60A; Policy Manual 5.9.1 & 5.7.13

Certain sources of income are **not** considered in the budget deficit calculation.

Common examples of non-chargeable income include:

- Income tax refunds;
- Child tax benefits;
- The Nova Scotia Poverty Reduction Credit;
- The Nova Scotia Affordable Living Tax Credit; etc...

A full list of non-chargeable income is contained in *Regulations 52 & 60A*.

Budget Deficit Exemption

Regulation 46; Policy Manual 5.17.2

A casework supervisor has the ability to exempt an IA applicant or recipient from the budget deficit calculation in certain circumstances:

- i. To protect the health or safety of an applicant, recipient or their family; **or**
- ii. To preserve the dwelling of an applicant or recipient. This could mean helping someone with major repairs to their home.

Ongoing Eligibility

Overview

It is up to IA recipients to prove their ongoing eligibility for IA.

If a recipient undergoes a change of circumstances – i.e. starts a job, gets married, etc... They must provide their caseworker with that information.

If a recipient does not advise their caseworker of the change in their circumstances it may result in their income assistance being cut-off, and a subsequent overpayment.

Employment

Regulations 17 – 20; Policy Manual 5.17.4 – 5.17.4 & 7.1.1 – 7.1.4

Some of the services offered to IA recipients are those which fall under the umbrella of *Employment Support Services*.

IA recipients, and their spouses, **must** undergo an employability assessment.

If the assessment determines they are able to work IA recipients, and their spouses, **must** enter into an employment plan.

Failure to accept suitable employment or participate in services that are part of an employment plan may result in ineligibility for IA.

IA will be discontinued for 6 weeks if an IA recipient, or their spouse:

- i. Quit a job without just cause;
- ii. Was fired with just cause; or
- iii. Quit a job for the purpose of qualifying for additional assistance.

Assets

Regulations 2(f), 55 & 60A; Policy Manual 5.7.10 – 5.7.16

An IA recipient, or their spouse or dependent child who obtains applicable assets in excess of the asset limits can be cut off income assistance for not less than 1 month or more than 1 year.

Cut offs due to excess assets can be prevented if the excess assets are spent on certain items previously listed in **Slide 8**.

Cut offs can also be prevented if a recipient places their asset (assuming it is cash) into certain types of exempt assets – i.e. RESP's and RDSP's.

Prior to spending or investing excess assets it is **essential** that an IA recipient receive supervisory approval.

Cohabitation

Regulations 6, 7, 15(3), 15(4) & 47; Policy Manual 5.1.9, 5.1.10 & 5.7.1

If an IA recipient begins cohabiting with someone they **must** advise their caseworker.

An IA recipient's cohabitant's income will be included in assessing the family's eligibility if the cohabitant meets the definition of a 'spouse'.

According to the *ESIA Regulations* a spouse includes a husband or wife of an applicant or recipient **or** a common-law or same-sex partner of an applicant or recipient.

Common law partners must live with one another in a relationship of interdependence – both economically and domestically. In addition **1** of the following must apply to the 2 people in the relationship:

- i. They have lived together for 12 consecutive months;
- ii. They have a child or children – either by birth, adoption or legal custody;
- iii. They previously lived together for 12 consecutive months, including any separation of less than 90 days; **or**
- iv. They advise a caseworker they are a common-law couple.

The Regulations stipulate that proof of cohabitation can be proven by any relevant evidence, and is **deemed** to occur where 2 people represent themselves to others to be each other's spouse.

Unfortunately mere allegations of cohabitation often result in IA being cut-off and possible resultant overpayments.

Services for Persons with Disabilities

What is Services for Persons with Disabilities?

The Department of Community Services also offers a collection of programs that are generally referred to as Services for Persons with Disabilities (SPD).

As of June 2012 there is a general SPD policy governing the programs offered under SPD. It can be found here: <http://novascotia.ca/coms/disabilities/SPDProgramPolicy.html>

This policy covers all of the eligibility criteria for SPD programs, amounts for special needs, etc...

A complete list of all the programs offered under the umbrella of SPD can be found here: <http://novascotia.ca/coms/disabilities/index.html>

The SPD program is governed by the *Social Assistance Act*.

The programs are offered to Nova Scotians with various mental, intellectual and physical disabilities. They focus primarily on providing residential options for people with disabilities (i.e. Residential Care Facilities, Small Option Homes and Group Homes), offering support to families caring for persons with disabilities (i.e. respite care) and providing minimal assistance with activities of daily living for people living at home.

Depending on their living situation SPD participants may be in receipt of a personal and shelter allowance from IA. SPD participants are also eligible for special needs.

Despite the legislative authority for SPD being found in the *Social Assistance Act*, appeals of SPD decisions are governed by the *ESIA* and the *Assistance Appeal Regulations*.

Accordingly the appeal process for an SPD participant will be the same as that for an IA recipient.

Differences Between Income Assistance and SPD

SPD Basic and Special Needs Policy 9.0, 7.4 & 7.4.2; SPD Financial Eligibility Policy 5.5.4.

In general, SPD policies are reflective of what we have already covered regarding *ESIA*. Some key differences to be aware of are as follows:

- i. SPD participants are eligible for an additional amount of money called a 'comfort allowance'. The comfort allowance is currently \$115.00 per month;

- ii. SPD participants who are employed can earn up to \$300.00 per month without it affecting their monthly entitlement. If they earn over \$300.00 per month it is charged against their monthly entitlement at 70%;
- iii. SPD participants are also eligible for some special needs that are unavailable to regular IA recipients – for example occupational therapy, physiotherapy and speech pathology;
- iv. SPD participants **are** eligible for up to \$200.00 per month in excess shelter as a special need provided they meet the following criteria:
 - v. A participant requires barrier free shelter;
 - vi. The cost of relocating the participant exceeds the annual rent increase;
 - vii. A participant's approved support plan has identified elements related to shelter that promote independence and reduce long term SPD support costs (i.e. reducing transportation costs, staffing, etc...); **or**
- viii. A participant cannot secure housing in a safe location that allows them to safely access the community or in a location that allows them to pursue their support plan goals.

Appeals

Appealing a Decision

ESIA Act sections 12(1), 12(4) & 12(5); Policy Manual 12.1.2, 12.1.5 & 12.1.9

Any decision made regarding IA that affects either an applicant or a recipient can be appealed.

Decisions are usually made in writing, but are sometimes made orally. An oral decision can be appealed.

There is a two step appeal process. The first step is an internal Administrative Review, and the second step is a hearing before the independent Assistance Appeal Board (AAB).

Step 1

ESIA Act sections 12(3) & 12(4); Appeal Regulation 6(1); Policy Manual 12.1.4 – 12.1.5

A person must commence their appeal within **30 days** from the time the decision they wish to appeal is communicated to them.

An appeal can be commenced either by a written, signed letter that requests an appeal and sets out the decision being appealed and the reasons why the decision is being appealed; or by using the Department's appeal form:

http://novascotia.ca/coms/employment/documents/Assistance_Appeals_Pamphlet.pdf

Upon receiving an appeal request the Department has **10 days** to conduct an administrative review of the decision under appeal. An administrative review decision is done by a casework supervisor – not the supervisor of the caseworker whose decision is being appealed.

Upon completion of the administrative review the Department sends a substantive written decision to the appellant.

The decision will contain both the factual and legal basis for the Department's decision.

If a person wishes to continue to the next stage of the appeal process (an oral hearing) they must tick the appropriate box and send in their appeal request within **10 days** of receiving the administrative review decision.

Step 2

ESIA Act sections 11 & 13(1); Appeal Regulations 4(3), 5, 11(1) & 12; Policy Manual 12.1.7 & 12.1.9.

The second step of the appeal process is an oral hearing before the AAB.

The AAB will consist of one member who will hear the appeal. The appeal board member is a Provincial appointee, and is **not** an employee of DCS.

Proceedings before the AAB are informal, and are not held in public. However the *Appeal Regulations* require that an appellant be given a chance to present relevant evidence, cross examine witnesses, rebut evidence presented by another party and argue or summarize their case.

The Department usually sends the caseworker and/or eligibility review officer whose decision is being appealed and that person's supervisor. Very occasionally the Department will send a lawyer to represent its interests before the AAB.

The law, and the Policy Manual, specifically allow appellants to be represented by an advocate at their AAB hearing.

Judicial Review

Appeal Regulations 13(2) – 13(3); Policy Manual 12.1.9

Following the appeal hearing the AAB will issue a written decision (*insert hyperlink to sample AAB decision*) within 7 days.

Upon application a decision of the AAB can be judicially reviewed by a justice of the Supreme Court of Nova Scotia.

Prior to applying to have a decision judicially reviewed your client **should** consult with a lawyer as there are limited circumstances when a judicial review will succeed.

There is a **25 day** time limit from the date the decision is communicated to the appellant to commence a judicial review.

After the Hearing

Appeal Regulations 14(2) & 15(1)

If your client was successful the decision subject to appeal will be reversed as of the date of the original decision.

If the issue upon appeal was eligibility for income assistance your client will remain cut-off of income assistance until they remedy the issue which lead to them being cut-off in the first place. Once that has taken place your client should reapply for income assistance.

Your client may also be charged with an 'overpayment'.

Overpayments

ESIA Act section 14; Regulation 68; Policy Manual 8.1.1 – 8.1.2 & 8.1.12

An overpayment is a debt owing to the Province.

An overpayment is the result of an IA recipient receiving IA for which they were not entitled as a result of error, misrepresentation or for a period of time during which a recipient received deferred income.

If someone is determined to be ineligible for IA all amounts paid to them, including Pharmacare, will be included in the overpayment amount.

Having an overpayment does not render someone ineligible for IA.

Overpayments are deducted from an IA recipient's monthly amount at a maximum of \$45.00 per month. The minimum deduction, as per the Policy Manual, is \$15.00 per month.

Overpayments can be waived upon successful request to the Minister of Community Services.

Pursuant to the *ESIA* an overpayment can be waived if:

- i. Recovery is not possible due to the death, bankruptcy or permanent absence from the Province of the person owing the overpayment;
- ii. Recovery would cause undue hardship; **or**
- iii. Recovery is contrary to the purpose of the Act.

A request to waive an overpayment can be made via a letter to the Minister. Unfortunately waiver of overpayments is extremely rare.

Underpayments

Regulation 69; Policy Manual 8.1.3

It is possible for IA recipients to be underpaid. For example they may have an approved special need (i.e. medical transportation) that is not paid to them in a given month or months.

If a recipient is underpaid, through no fault of their own, they are limited to recovering only 6 months of the underpayment.

Helpful Tips

General Tips

If you have a client who comes to you with an IA issue your first point of contact should be their caseworker.

Be persistent! Caseworkers can be very difficult to reach via phone, and often only have certain hours during which they return calls.

If you do not hear back from a caseworker, or you are not able to make any progress with them you should speak to their casework supervisor.

Supervisors have more discretion in making decisions, and sometimes you can reach a resolution regarding your client's issue. Specifically supervisors are able to make decisions involving greater sums of money than caseworkers. A caseworker can only make decisions costing up to \$200.00.

Appeals

The first step of the appeal process is a paper process only.

If you have additional evidence to submit in support of your client's appeal you should do so at the first stage of the appeal process. Sometimes the additional information will be sufficient to overturn the initial decision.

If you go to an appeal hearing be sure to gather all of the evidence you think you will need to prove your client's case. This could include documentary evidence and/or witnesses who can testify about certain events. If you have documentary evidence be sure to bring 3 copies to your client's appeal hearing – one for you, one for the Department and one for the AAB member.

You must also ensure that you have all of the evidence that the Department will be using against your client. The best way to ensure you have all of that evidence is to make a Freedom of Information request to view your client's IA file. The Department's FOIPOP coordinator can be contacted at **424-5558**.

Remember that the appeal hearing will be your client's first chance to provide their version of events to a live decision maker. The result of the appeal hearing may come down to their credibility in the eyes of the decision maker.

During the hearing you may refer to sections of the *ESIA* and *ESIA Regulations* to support your case. Remember that the Policy Manual is not the law.

Depending on the complexity of the issue you may wish to make written submissions on the law to the AAB prior to the hearing.

First Meeting

Ensure that a potential IA client brings the following with them to the first meeting:

- i. Name and contact information of their caseworker;
- ii. Any relevant correspondence from the Department of Community Services; and
- iii. Any relevant evidence supporting their position.

During the first meeting you should obtain the following:

- i. Consent from your client to speak with the Department of Community Services about their file;
- ii. A completed FOIPOP request form.
- iii. Consent forms for any other professionals, i.e. doctors, if applicable.

Additional Resources

Government

The government of Nova Scotia maintains a website about income assistance with useful information:
http://novascotia.ca/coms/employment/income_assistance/index.html

Dalhousie Legal Aid Service

There is a 'Welfare Right's Guide' and a pamphlet on 'Special Diets' – both published by the Dalhousie Legal Aid Service.

Case Law

Appeal board hearings are not available, however judicial reviews of those decisions are available via CANLII: <http://www.canlii.org/en/ns/>

Nova Scotia Legal Aid

NSLA offices provide summary advice to clients regarding IA. Their contact information can be found here: <http://www.nslegalaid.ca/contact.php>